



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

LNO/167022

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 30, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Dane County Department of Human Services in regard to the collection of a delinquent child care overpayment, a hearing was held on August 20, 2015, at Madison, Wisconsin.

The issue for determination is whether the Department correctly imposed a lien on petitioner's property due to the delinquency of his remaining child care overpayment balance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Monica Johnson, overpayment specialist  
Dane County Department of Human Services  
1819 Aberg Avenue  
Suite D  
Madison, WI 53704-6343

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County who has two children with his wife, [REDACTED]. Petitioner and his wife were divorced on July 7, 2014.
2. The petitioner received child care benefits for his two children.

3. On April 22, 2013, the county agency issued a Child Care Overpayment Notice to the petitioner stating that petitioner received an overpayment totaling \$14,992.00 from April 1, 2012 through March 31, 2013. See Exhibit A1.
4. The Dane county agency is representing the Department's Public Assistance Collection Unit (PACU) on this matter of a lien due to petitioner's delinquent payment of his child care overpayment balance.
5. The agency sent a Repayment Agreement to the petitioner on May 2, 2013. See Exhibit A2.
6. On October 23, 2013, the agency received a signed Repayment Agreement from petitioner with an installment amount of \$20. See Exhibit C.
7. The petitioner made payments against the child care overpayment balance, but failed to make payments during at least the months of January, 2014 through May, 2014.
8. The agency sent dunning notices to the petitioner on December 3, 2013, February 4, 2014, and March 4, 2014. See Exhibit A3.
9. The petitioner's outstanding child care balance as of June 24, 2015 was \$9,922.11.
10. On June 24, 2015, the PACU sent petitioner a notice informing petitioner that it was docketing a warrant lien for the unpaid child care overpayment balance of \$9,922.11. Petitioner filed this appeal pursuant to sec. 49.195(3m), Wis. Stats.
11. As of the August 20, 2015 hearing date, the petitioner's child care overpayment balance was reduced to \$9,182.11. See Exhibit B.

### **DISCUSSION**

Under Wis. Stat., §49.195(3m), if a person fails to repay a public benefits overpayment, the Department may issue a warrant with the county clerk of court that will impose a lien on property owned by the debtor. The Child Care Manual sec. 2.1.6.2 allows the Department to issue such a warrant if repayment of a child care debt is delinquent. The person may appeal the warrant to the Division of Hearings and Appeals, but the **only issues that the administrative law judge may review are whether the debt is repaid in full or whether there is mistaken identity**. Wis. Adm. Code, §DCF 101.23(9)(a)5.

There is no question that petitioner is the correct person and it is evident that as of June 24, 2015 \$9,922.11 still is owed on the child care overpayment debt. Petitioner filed this appeal because he is paying the debt through periodic installment payment since October, 2013, but has missed payments some months, and thus became delinquent. Finding of Fact #7 above. Due to those missed payment, petitioner was delinquent in paying the debt. There is nothing in the law preventing the Department from issuing the warrant when the person is sometimes making installment payments (or paying the debt through levy or tax intercept), and even if there was such a limitation the hearing issues before the Division of Hearings and Appeals are limited and do not include the fairness of issuing the warrant.

During the August 20, 2015 hearing, petitioner alleged without any corroboration that he did not receive some of the notices from the agency or the Department. However, petitioner was aware of the requirement to make monthly payments per his repayment agreement, and was unable to refute that he failed to do so during some months. Furthermore, petitioner did not establish with any reliable evidence that he had any problems in his mail delivery, and none of the notices were returned as undeliverable. Accordingly, based upon the above, I must conclude that the Department correctly imposed a lien on petitioner's property due to the delinquency of his remaining child care overpayment balance.

### CONCLUSIONS OF LAW

The Department is authorized to issue the warrant lien in this case because petitioner has an outstanding Child Care overpayment debt, and he is the correct person who owes the delinquent child care overpayment.

**THEREFORE, it is**

### ORDERED

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of October, 2015

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 26, 2015.

Dane County Department of Human Services  
Public Assistance Collection Unit